

When persons sell tangible personal property which they are not otherwise engaged in selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a PLR.)

November 6, 2000

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of September 21, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither to COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY, BUSINESS is requesting a private letter ruling regarding Illinois treatment of sales/use tax law as it relates to the following two transactions. We have enclosed a copy of form IL-2848, Illinois Power of Attorney, authorizing us to correspond with you regarding this request.

Facts:

COMPANY ('Individual') is the sole owner of Company. Company's Illinois sales/use tax registration number is #####.

Company recently purchased an aircraft from an out-of-state dealer for \$414,000. Please see contract dated August 17, 2000 enclosed. Registration and licensing documentation, copies of which are enclosed, were filed with the Federal Aviation Administration on August 18, 2000 transferring title of the aircraft to Company.

Company sold the aircraft to Individual for \$415,000 within 1-2 days of purchasing the aircraft. Please see contract dated August 18, 2000 enclosed.

Company has not used the aircraft at any time in Illinois. At the time of sale, the aircraft was located out-of-state. The aircraft was delivered by the out-of-state dealer into Illinois on August 16, 2000 and was subsequently resold to Individual.

Company did not include the aircraft on any depreciation schedules for the year 2000.

Illinois license and registration of the airplane will be transferred to Individual. Within 30 days of the arrival of the aircraft into Illinois, Company paid Illinois use tax of \$25,875.

Questions:

1. Is the transaction between the out-of-state dealer and Company exempt from Illinois sales and use tax as a sale for resale?
2. Is the transaction between Company and Individual exempt from Illinois sales and use tax as an occasional sale?

Discussions:

In looking at these transactions as two distinct and separate transactions, the first transaction meets the definition of a sale for resale. Pursuant to Illinois Compiled Statutes Chapter 35 Section 120/2c, '...a sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department...' This position is supported in the Illinois Department of Revenue Administrative Hearing UT 95-9 dated January 1, 1995. In this case, the taxpayer was attempting to claim that his purchase of an aircraft was a purchase for resale. The Administrative Law Judge ruled that since the taxpayer was not a retailer nor had an assigned resale number from the Department nor had applied for one, the resale exemption was not available to the taxpayer. Our situation differs from the one mentioned as Company has an active registration number for the purpose of being a retailer and making purchases for resale. By not having the aircraft on the depreciation schedule, it also shows the intent of Company to purchase the aircraft for resale. Additionally there was no use of the airplane by Company as the plane was not brought into the state until the second transaction was in process.

In examining the sale from Company to Individual, this transaction meets the definition of an occasional sale as set forth in the Illinois Compiled Statutes. According to the Statutes Chapter 35 Section 120/2, 'the isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property does not make such person a retailer hereunder.' Although Company is registered as a retailer and has an active registration number, the business does not habitually engage in the sale of aircraft.

Utilizing the basic definitions as set forth in the Illinois Statutes and identifying that two separate and distinct transactions have occurred, it would appear that both transactions would be exempt from Illinois sales and use tax remittance or collection.

We could not locate contradictory cases or previous letter rulings addressing a similar set of facts as established in this request. To the best of our knowledge, the Illinois Department of Revenue has not previously ruled on the same or similar issues for Company or Individual and no previous letter ruling has been requested by Company or Individual regarding these issues. There has also been no audit or pending litigation with the Illinois Department of Revenue.

Thank you in advance for your assistance in this matter. If you have any questions regarding any of the information provided, please contact me at #####.

In your letter you set out a situation where an Illinois corporation that has an individual sole shareholder purchases an airplane out-of-State and then within one or two days brings the plane to Illinois and sells it to the individual sole shareholder. We do not conclude that the proposed scenario set out in your letter will result in the second sale qualifying for the occasional sale exemption.

As a general proposition, the occasional sale exemption is only available when a person (as defined in Section 1 of the Retailers' Occupation Tax Act, 35 ILCS 120/1) purchases an item and then, after using the item, disposes of it by selling it. Please refer to 86 Ill. Adm. Code 130.110. When a person purchases an item of tangible personal property with the intention of reselling it to a purchaser for use or consumption, that person engages in conduct equivalent to holding himself out as a retailer. This makes the initial purchase a purchase for resale and the subsequent sale is a taxable sale at retail subject to Illinois Retailers' Occupation and Use Tax liabilities. See 86 Ill. Adm. Code 130.201 and 130.210. An infrequent number of such sales does not transform them into occasional sales because the original objective of purchasing the item for resale to a purchaser for use or consumption establishes that the purpose of the sales transactions are resale (initial transaction) and retail (subsequent transaction).

We note the documents you have furnished include a copy of the sales contract from the dealer to the corporation. This is dated 8-17-00. The corporation then sold the plane to its sole shareholder only one day later (8-18-00) according to the corporate resolution and purchase agreement. You acknowledge in your letter "the intent of Company to purchase the aircraft for resale." We conclude the evidence is overwhelming that the intent of the corporation as purchaser was to resell it to the individual purchaser for use, thus making the latter transaction a taxable retail sale.

Because we conclude that when the corporation purchased the plane, it did so with the intent to resell it to the individual shareholder, the occasional sale exemption is not available. The corporation was functioning as a retailer and the sale would be subject to Retailers' Occupation and Use Tax liabilities.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

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